

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

**UNITED STATES SECURITIES
AND EXCHANGE COMMISSION,**

Plaintiff,

v.

**MARLON QUAN, ACORN CAPITAL
GROUP, LLC and STEWARDSHIP
INVESTMENT ADVISORS, LLC,**

Defendants.

Civil No. 11-723 ADM/JSM

DECLARATION OF DAVID S. SMITH

1. My name is David S. Smith. I am a partner in the law firm Smith Campbell, LLP and a member of the Bar of the State of New York.
2. Since 2008 I have represented Marlon Quan, Acorn Capital Group LLC ("Acorn") and Stewardship Investment Advisors LLC ("SIA") in various litigation matters. I have not acted as counsel to either the domestic fund Stewardship Credit Arbitrage Fund LLC ("SCAF") or the offshore fund advised by SIA.
3. I have reviewed the Supplemental Declaration of Donald A. Ryba, dated February 17, 2012, submitted by the United States Securities and Exchange Commission in support of its pending motion seeking appointment of a receiver and other relief.
4. At paragraphs 10-12, the Ryba Declaration states that four investors have sued Mr. Quan, Acorn, SIA and SCAF. I have represented Mr. Quan and SIA in the lawsuits brought by investors Poptech, Quinn and Pressman. Quinn and Pressman


brought a single action which asserted both direct claims against SCAF and derivative claims on behalf of SCAF. The direct claims were dismissed on a contested motion in 2010 and the derivative claims were voluntarily dismissed in December 2011 without payment of any consideration by SCAF or any other defendant. Settlement discussions are ongoing in the *Poptech* lawsuit, and there are also pending motions to dismiss the complaint for failure to state a claim. At oral argument on those motions earlier this month, United States District Court Judge Mark Kravitz advised the parties that he would render a decision as soon as possible and that he considered the arguments on the motions to present a "close case." (SCAF is represented by other counsel in the *Poptech* case.)

5. With respect to the lawsuit by SSR Capital Partners, L.P., to which Mr. Ryba refers, I provided strategic advice to Mr. Quan and I am therefore generally familiar with that action, though I did not appear as counsel in the action, which was defended by Texas lawyers because the case was brought there. Mr. Quan originally was named as a defendant in the SSR case but the case was dismissed as to him for lack of personal jurisdiction. A default judgment was entered against Acorn. SIA remained a defendant until the case was settled last year. (I have been advised that WilmerHale disclosed the full settlement terms to the SEC, but a confidentiality provision bars public disclosure of them.) Even after he was personally dismissed from the case and Acorn was unable to defend it, Mr. Quan took steps to make sure SCAF remained represented through the point that plaintiffs agreed to settle. As a result of the settlement the claims against SCAF have been dismissed. However, I understand that the settlement payment was made solely by SIA.

6. Thus Mr. Ryba's declaration is incorrect in implying in paragraph 10 ("there *are* several lawsuits") that all four investors have pending claims against SCAF. The two cases brought by three of these investors (SSR, Quinn and Pressman) have been dismissed, and the remaining case (by Poptech) is the subject of pending motions to dismiss.

7. I have not represented SCAF in any matters. In each case where SCAF was a co-defendant with Mr. Quan, SCAF was separately represented by a firm that did not represent Mr. Quan (or SIA or Acorn) in the action. In each case, SCAF obtained the benefit of defense expenditures made by SIA, which in large measure came from money loaned to SIA by Mr. Quan. In each case where I appeared as counsel, SCAF's counsel seemed to make reasonable efforts to minimize expense by adopting to the extent possible arguments developed and advocated by my law firm on behalf of Mr. Quan and (where applicable) his companies.

I declare under penalties of perjury that the foregoing statements are true to the best of my knowledge, information and belief.



David S. Smith

Executed this 28th day of February, 2012.